

IN THE IOWA DISTRICT COURT IN AND FOR ALLAMAKEE COUNTY

DONNA JEAN LUBAHN and ERNEST,)	
LUBAHN,)	
)	LAW NO. LACV026101
Plaintiffs,)	
)	
vs.)	
)	DEFENDANTS' MOTION
VAL LYONS, M.D., and VAL O. LYONS,)	IN LIMINE
M.D., P.C.,)	
)	
Defendants.)	

COME NOW, Defendants Val Lyons, M.D., and Val O. Lyons, M.D., P.C., by and through their attorney of record, and hereby file their Motion in Limine, requesting that the Court enter an Order in Limine prohibiting Plaintiffs from introducing any evidence subject to this Motion and prohibiting Plaintiffs from making reference to any matter set forth below in voir dire, opening statement, evidence, closing argument, or otherwise:

1. Healthcare Provider Hearsay/Criticisms.

Evidence in the form of oral comments, conversations, discussions, or statements, which Plaintiffs attribute to any of the health care providers should not be allowed. In her discovery responses, Plaintiff Donna Lubahn (Plaintiff) claims that several healthcare providers made statements which were critical of the treatment provided by Dr. Lyons at issue.

In her Answers to Interrogatories, Plaintiff attributes a number of statements to her healthcare providers which were critical of Dr. Lyons. (Ex. 1). For example, she alleges that subsequent treating physician, Dr. Jeffrey Lawrence, told her that he would not have done the partial hip replacement surgery, as performed by Dr. Lyons, rather, he would have pinned the fracture. (Ex. 1). She further alleges that he told her that he has seen other patients from

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Waukon following an initial hip replacement by Dr. Lyons. (Ex. 1). As a further example, in her deposition, she alleges that the Hospital Administrator at Veterans Memorial Hospital called her and recommended that she get a second opinion. (Ex. 2, Tr. 70).

Such statements are obviously hearsay. Hearsay is defined as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Iowa R.Evid. 5.801(c). Hearsay is inadmissible under Iowa R.Evid. 5.802.

Furthermore, these statements do not qualify under the exception to the hearsay rule relating to statements made for purposes of medical diagnosis or treatment. *See* Iowa R.Evid. 5.803(4). Statements made for purposes of medical diagnosis or treatment are excluded from the hearsay rule because the declarant’s self-interest in proper diagnosis or treatment makes the statements reliable. *State v. Neitzel*, 801 N.W.2d 612, 621 (Iowa 2011). In order for these statements to be admissible, the proponent must demonstrate: (1) the declarant’s motive in making the statement is consistent with the purposes of promoting treatment, and (2) the content of the statement must be such as is reasonably relied on a physician in treatment or diagnosis. *Id.*

These statements, if made, were obviously not intended to promote the diagnosis and treatment of Plaintiff’s hip condition. Rather, they are random, off-the-cuff statements criticizing the manner in which Dr. Lyons performed the surgery and his ability as a surgeon. Although descriptions of the cause of a particular condition may be admissible under Rule 5.803(4), so long as they are deemed reasonably pertinent to a medical diagnosis or treatment, statements attributing blame or identifying persons inflicting an injury, generally do not satisfy the standard of medical pertinence. 7 Ia Prac., Evidence §5.803:4 *citing McCormick on Evidence*, §277 (6th Ed.

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2006) (descriptions of cause are allowed if they are medically pertinent, but statements of fault are unlikely to qualify.) *See Manno v. McIntosh*, 519 N.W.2d 815 (Iowa App. 1994) (statements by a non-party physician that the defendant physician should have performed certain procedures, such as radiology studies and surgery, were hearsay).

The jury should not make a determination of negligence based upon a layperson's understanding and then repetition of what the health care provider said. Evidence as to the applicable standard of care and its breach must be furnished by an expert. *Oswald v. LeGrand*, 453 N.W.2d 634, 635 (Iowa 1990). It would be highly prejudicial and inconsistent with expert rules applicable to professional negligence cases for Plaintiff to introduce Plaintiff's restatement of what she understood regarding the liability issues in this case. Upon hearing such hearsay, the jury could find against Defendants – not because there was evidence of any breach of the applicable standard of care – but because of this hearsay. Indeed, Plaintiff's admitted misunderstanding of Dr. Lawrence's alleged statements makes it imperative that the evidence be excluded so that the jury does not reach a similar erroneous conclusion.

2. Any Evidence or Argument That Defendants' Actions Caused Plaintiff's Infection or Resulting Damages.

Following Dr. Lyons' treatment at issue, on March 3, 2014 subsequent treating orthopedic surgeon, Dr. Jeffrey Lawrence, performed surgery intended to revise the prior partial hip replacement performed by Dr. Lyons. (Ex. 3, Tr. 37). However, during the surgery, Dr. Lawrence discovered an infection in the hip joint. (Ex. 3, Tr. 39-40). Consequently, rather than proceeding with the total hip replacement as planned, he performed a procedure designed to

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address the infection. (Ex. 3, Tr. 47). Subsequently, on May 13, 2014 Dr. Lawrence proceeded with the total hip replacement. (Ex. 3, Tr. 47).

Plaintiff's orthopedic surgeon expert, Dr. William Simonet, will opine that the hemiarthroplasty performed by Dr. Lyons carried a greater risk of infection and therefore, Dr. Lyons should have opted for a pinning procedure. (Ex. 4). He will further opine that Plaintiff lost a chance of avoiding the infection as a result of the decision to proceed with a hemiarthroplasty, as performed by Dr. Lyons on May 1, 2013. (Ex. 4).

However, Plaintiffs' expert, Dr. Simonet, has no opinion as to what caused this infection. (Ex. 5, Tr. 90). Likewise, Plaintiff's subsequent treating orthopedic surgeon, Dr. Lawrence, has no opinion what caused this infection. (Ex. 3, Tr. 44). To save this claim, Plaintiff has tried to create a lost-chance claim. In other words, Plaintiff will argue that the decision to proceed with the hemiarthroplasty versus pinning, lost Plaintiff a chance of avoiding the subsequent infection, as discovered by Dr. Lawrence during the March 3, 2014 procedure. Plaintiff's reliance upon the lost chance theory is misplaced because Plaintiff has the "cart before the horse."

The lost-chance theory has often been urged in cases against "*intervening*" tortfeasors in which the plaintiff cannot meet the traditional requirement for showing cause by the "probable" standard. *Wendland v. Sparks*, 547 N.W.2d 327, 330 (Iowa 1998) (emphasis added). The lost-chance theory is clearly reserved for cases, unlike the present case, where a preexisting condition that may cause some ultimate harm to the plaintiff, is disrupted by an intervening negligent act. *Id.* Under the lost-chance theory, a victim who suffers from a *preexisting* adverse condition and is then subjected to another source of injury, may have a claim for the negligent *second* event. *Wendland v. Sparks*, 547 N.W.2d at 330 (emphasis added). The rationale is that,

if it were not for the defendant's second negligent event, the victim might have survived the first event without harm. *Wendland v. Sparks*, 574 N.W.2d at 330. Consequently, a plaintiff may claim that as a result of the intervention of the defendant's conduct, plaintiff lost the chance to recover from the preexisting condition or otherwise would have avoided some untoward consequences of it. *Wendland v. Sparks*, 574 N.W.2d at 331.

The lost-chance theory was first recognized in Iowa in *DeBurkarte v. Louvar*, 393 N.W.2d 131 (Iowa 1986). In *DeBarkarte*, the patient's estate claimed a lost chance of survival based upon the doctor's failure to diagnose the patient's cancer at an earlier time when, according to the medical evidence, she had a fifty to eighty percent chance of survival. *DeBarkarte*, 393 N.W.2d at 137. Clearly, the claim was based upon the doctor's subsequent act in failing to diagnose the patient's preexisting cancerous condition. In *Wendland v. Sparks*, the Iowa Supreme Court expanded the theory beyond medical diagnosis cases. *Wendland v. Sparks*, 574 N.W.2d at 332. In *Wendland*, the patient was suffering from multiple life threatening diseases and her estate claimed that she lost a chance of survival because her treating doctor failed to administer cardiopulmonary resuscitation following her respiratory arrest in the hospital. *Wendland v. Sparks*, 574 N.W.2d at 328. Again, it was the physician's subsequent omission which created the claimed lost chance.

However, in the present case, in stark contrast, Plaintiff is alleging that Defendants' conduct caused a lost chance with respect to a *subsequent* damaging event, *i.e.*, the infection. There is no Iowa case which holds that a defendant is liable for subsequent injury, absent a showing that it is probable or likely that defendant's conduct caused the subsequent injury. *See, Wendland v. Sparks*, 574 N.W.2d at 330 (testimony indicating probability or likelihood of a

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causal relation is necessary in a medical malpractice action). To accept Plaintiff's theory that a prior action could somehow deprive Plaintiff of a lost chance of survival or injury, would reduce this standard to a nullity. It would mean that in virtually any case, a plaintiff could establish the requisite causal connection between the defendant's actions and the claimed injury, by speculating that the defendant's actions somehow reduced plaintiff's chances of avoiding injury. The bottom line is that Plaintiff must show that it is more likely than not, that Defendants' actions caused Plaintiff's claimed injury. In the present case, there is no evidence as to the cause of Plaintiff's infection, let alone the requisite evidence that Defendants' actions were the likely cause of that injury. Therefore, Plaintiff should not be allowed to argue that Defendants are somehow liable for Plaintiff's infection.

3. **Evidence Regarding Plaintiff's Past Medical Expenses Which Have Been Replaced or Indemnified by Any Source Other Than Plaintiff's Own Assets is Inadmissible Pursuant to Iowa Code §147.136.**

Plaintiff is apparently claiming damages for past and future medical expenses. (Plaintiffs' Petition ¶35). However, Plaintiff's medical expenses have been paid by insurance and Medicare.

Iowa Code §147.136 expressly bars medical malpractice plaintiffs from making a claim for damages if those damages have been replaced or indemnified by any source other than plaintiff's own assets. Iowa Code §147.136. In enacting this statute in 1975, the Iowa Legislature determined that in order to reduce medical malpractice awards and address the medical malpractice insurance crisis, a plaintiff in such a case could not recover medical expenses unless those expenses were actually paid by the plaintiff or the plaintiff's family. *Rudolph v. Iowa Methodist Medical Center*, 293 N.W.2d 550, 558 (Iowa 1980). The Legislature's purpose in enacting §147.136 was to reduce the size of malpractice verdicts by barring recovery for the

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portion of the loss paid by collateral benefits, which would presumably result in a reduction of premiums for medical malpractice insurance. *Lambert v. Sisters of Mercy Health Corp.*, 369 N.W.2d 417, 423 (Iowa 1985). Indeed, the Legislature's intent was to help assure the public of continued healthcare services at affordable rates. *Id.*, at 424.

The fact that Plaintiff's insurance carriers may be claiming a subrogation interest is irrelevant. Subrogation rights acquired by an insurer against a wrongdoer rise no higher than those held by its insured against such offender. *St. Paul Insurance Co. v. Horace Mann Insurance Co.*, 231 N.W.2d 619, 625 (Iowa 1975). As noted, pursuant to Iowa Code §147.136, Plaintiff has no right to pursue recovery of medical expenses paid by her insurance plan. Since the subrogation rights acquired by an insurer against a wrongdoer rise no higher than those held by its insured against such offender, Plaintiff's health insurance carriers have no right of subrogation against these Defendants.

The only possible exception is Medicare. The Iowa Supreme Court has not specifically ruled on whether Iowa Code §147.136 is preempted by Medicare's right of recovery. However, the Court's decision in *Mohammed v. Otoadese*, 738 N.W.2d 628, 634-35 (Iowa 2007) is instructive. In *Mohammed v. Otoadese*, the plaintiff estate sought to introduce evidence regarding past medical expenses on the grounds that Medicare would have to be reimbursed in the event of any recovery in the case. *Id.* at 634. However, the estate argued that the jury should not be told that the bills were paid by Medicare. *Id.* at 634. Defendant Dr. Otoadese sought to exclude evidence of medical expenses pursuant to Iowa Code §147.136. *Id.* at 634. The district court held that the estate could claim damages for the amount it would have to repay Medicare, but also ruled that the jury could be told that the bills had been paid by Medicare. *Id.* at 634.

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The Supreme Court held that because a new trial was not warranted in the case, it did not have to determine whether the trial court correctly interpreted §147.136. *Id.*, at 636 n. 3. Nevertheless, the Court held that the district court did not err in limiting the estate's recovery to the amount it would have to repay Medicare and allowing the jury to hear evidence that Medicare paid these bills. *Id.*, at 635. Therefore, if the Court determines that Plaintiff can still recover those medical expenses paid by Medicare, Defendants suggest that this procedure be followed.

4. Expert Testimony by Plaintiff's Treating Physicians.

Plaintiff's treating physicians can only express opinions formed in the course of their treatment. *Hansen v. Central Iowa Hospital Corp.*, 686 N.W.2d 476, 482 (Iowa 2004). Treating physicians are not ordinarily required to formulate standard of care opinions in the course of their treatment and therefore such opinions fall under Iowa Code §668.11 and must be disclosed as expert opinions. *Id.* Plaintiff has not disclosed any opinions by Plaintiff's treating health care providers pursuant to Iowa Code §668.11 and/or Iowa R. Civ. P. 1.508. Accordingly, only those opinions disclosed in the treating health care provider's records, if any, are admissible.

5. Any Evidence Concerning or Referencing Peer Review, Credentialing, Privileging, Etc.

To the extent Plaintiff attempts to elicit testimony, make reference to, or introduce documents that pertain in any way to peer review or other evaluative activities, such evidence is inadmissible. First, it is subject to statutory and regulatory privileges. *See*, Iowa Code §147.135(2); Iowa Code §135.40-42. Second, it is not relevant to any claim or defense and therefore inadmissible. Iowa R.Evid. 5.402. Finally, evaluative or investigative type evidence,

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or reference to such activity, would be highly prejudicial to Defendants because it carries a negative connotation. Therefore, the evidence is more prejudicial than probative and inadmissible. Iowa R.Evid. 5.403.

6. Expert Testimony by Non-Experts.

Non-expert witnesses are not allowed to opine on standard of care and/or causation. *See, Welte v. Bello*, 482 N.W.2d 437, 439 (Iowa 1992); *Forsmark v. State*, 349 N.W.2d 763, 769 (Iowa 1984). Plaintiff has designated one expert: William Simonet, M.D. Plaintiff cannot augment the opinions of this expert through the use of lay testimony critical of the care provided and/or purporting to address causation. *Id. See also*, Iowa Code §§147.139, 668.11(2) (2005).

7. Undisclosed Expert Opinions.

Any testimony by Plaintiff's experts regarding opinions which were not properly disclosed in their written opinions pursuant to Iowa R. Civ. P.1.508. Defendants respectfully request the Court to limit Plaintiff's expert witnesses to the testimony that they have given or expressed in their Rule 1.508 opinions.

8. Undisclosed Claims of Injuries and/or Damages.

Plaintiff should not be allowed to make reference to, argue, or submit evidence of, any injuries and/or damages which have not been timely and properly pled, and/or disclosed and produced in discovery. Iowa R. Civ. P. 1.503(4), 1.508(3), 1.517(1)(c), 1.517(4).

9. Past Acts, Claims and/or Suits.

Any reference to, or evidence of, other acts, patient complications, claims, suits or alleged malpractice, by Defendants should be excluded under Iowa R. Evid. 5.401-5.402 because it is

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irrelevant; under Iowa R. Evid. 5.403 because it is prejudicial and will result in the confusion of issues; and under Iowa R. Evid. 5.404(b) because it involves "other wrongs or acts" evidence.

Furthermore, evidence concerning other patients or should be excluded under Iowa R. Evid. 5.403. The admission of such evidence would result in a waste of time on collateral issues, create undue delay, and mislead the jury. Moreover, any possible probative value of this evidence is substantially outweighed by the unfair prejudice to Defendants.

Other courts have held, in the context of professional malpractice, that evidence of other incidents or other professional malpractice suits, is not relevant, is highly prejudicial, and should not be admitted:

The fact of prior litigation has little, if any, relevance to whether [the physician] violated the applicable standard of care in the immediate case. The admission of evidence of prior suits, instead of aiding the fact finder in its quest, tends to excite its prejudice and mislead it... [We] cannot conceive of a more damaging event, in a medical malpractice trial, than disclosure to the jury in opening argument that the defendant doctor had previously been sued multiple times for malpractice.

Lai v. Sagle, 818 A.2d 237, 247-48 (Ct. Appt. Md. 2003).

10. Comparison of Wealth of Parties and/or Resources to Prosecute/Defend.

It is not anticipated that Plaintiff will introduce such evidence, nevertheless Plaintiff should not be permitted to in any way characterize herself as the "underdog" or the "David" versus "Goliath" in this case or otherwise imply that the Defendants have the ability to spend more money or devote more resources to the defense of this litigation than Plaintiff has for the prosecution thereof. *Burke v. Reiter*, 42 N.W.2d 907, 912 (Iowa 1950) ("any comparison of respective earning powers or financial or economic conditions is entirely improper"). *See also*,

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Rosenberger Enterprises, Inc. v. Insurance Services Corporation of Iowa, 541 N.W.2d 904, 907 (Iowa 1995) and *Hackaday v. Brackelsburg*, 85 N.W.2d 514, 518 (Iowa 1957).

11. Evidence Regarding Punitive Damages, Punishment and “Sending a Message.”

Plaintiff has not asserted a claim for punitive damages. It is not anticipated that Plaintiff will argue that Defendants should be punished or that the jury should send a message to Defendants. Nevertheless, such argument is irrelevant and highly prejudicial. Iowa R. Evid. 5.402-5.403; *see Nishihama v. City and County of San Francisco*, 112 Cal. Rptr. 2nd 861, 865 (Cal. App. 2001) (any suggestion that the jury should send a message by inflating its award of damages is improper where punitive damages are not submitted).

12. Liability Insurance.

Evidence of, or reference to, malpractice insurance is inadmissible and should be excluded. Iowa R. Evid. 5.411; *see Price v. King*, 122 N.W.2d 318, 323 (Iowa 1963).

13. “The Golden Rule.”

It is not anticipated that counsel for either party will violate the so-called “Golden Rule.” Nevertheless, as a precautionary measure Defendants assert that it is well settled that “[d]irect appeals to jurors to place themselves in the situation of one of the parties, to allow such damages as they would wish if in the same position, or to consider what they would be willing to accept in compensation for similar injuries are condemned by the courts.” *Russell v. Chicago, R.I. & P.R. Co.*, 86 N.W.2d 843, 848 (Iowa 1957).

14. Sequestration of Witnesses.

Defendants request that all non-party witnesses be sequestered.

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15. Motions in Limine.

In addition to the foregoing specifics, Defendants also hereby request an Order in Limine prohibiting all comment or evidence in any form by Plaintiff, her witnesses, and/or her representatives that this Motion in Limine, or any other motion in limine submitted or to be submitted by Defendants, has in fact been presented and/or ruled upon by the Court, or that Defendants have sought to exclude from proof any matter bearing on the issues in this case. The above-referenced subjects should properly be excluded from trial of this case. If such matters were introduced or produced in any manner before the jury, it would require Defendants to make objections thereto in the presence of the jury. If Defendants wait to make their objections until that time, even with an admonition from the Court to the jury with respect thereto, the jury will not understand the basis or the reasons for the objections and may construe the objections as an attempt to hide material matters, all to the prejudice of the Defendants. Consequently, Defendants should not be forced to make such objections in the presence of the jury. Rather, Plaintiff and her representatives, including, but not limited to her expert and lay witnesses, and her attorneys, should be ordered prior to trial not to make reference to, submit any evidence of, the matters set forth in this Motion and/or the fact that this Motion has been filed.

WHEREFORE, Defendants pray that the Court enter an Order in Limine prohibiting Plaintiffs and their attorneys from introducing any evidence subject to this Motion in Limine and prohibiting Plaintiffs or their attorneys from making reference to any matter set forth above in voir dire, opening statement, evidence, closing argument or at any other time in the presence of the jury.

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AT0001031

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By

/s/ Jennifer E. Rinden

Jennifer E. Rinden

AT0006606

CERTIFICATE OF SERVICE

I, Wanda McFarland, certify that on the 23rd day of January, 2017, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to the following attorneys of record:

James P. Hayes
Karen A. Lorenzen
Attorneys at Law
Plaza Centre One, Suite 580
125 South Dubuque Street
Iowa City, IA 52240

By:



Wanda McFarland

IN THE IOWA DISTRICT COURT IN AND FOR ALLAMAKEE COUNTY

DONNA JEAN LUBAHN and ERNEST,)
LUBAHN,)

Plaintiffs,)

vs.)

VAL LYONS, M.D., and VAL O. LYONS,)
M.D., P.C.,)

Defendants.)

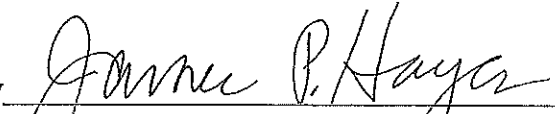
LAW NO. LACV026101

PLAINTIFF DONNA JEAN LUBAHN'S
ANSWERS TO INTERROGATORIES
PROPOUNDED BY DEFENDANT VAL
LYONS, M.D.

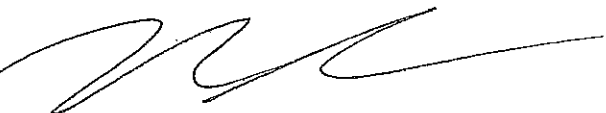
Plaintiff, Donna Jean Lubahn, hereby submits her answers to Val Lyons, M.D.'s
Interrogatories.

HAYES LORENZEN LAWYERS PLC

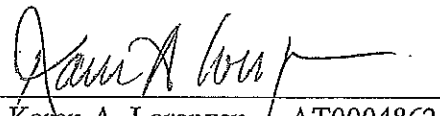
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ATTORNEYS FOR PLAINTIFFS

INTERROGATORY NO. 10: Please state specifically the name, address, and telephone number of any and all doctors, nurses, or other healthcare providers who are aware of the relevant facts in this case and who have stated that the Defendants, including their employees, agents or representatives, breached the standard of care in the treatment provided to Plaintiff Donna Jean Lubahn, and please state in detail what was said regarding the alleged breach.

ANSWER:

Plaintiff objects to Interrogatory No. 10 to the extent that it exceeds the permissible scope of discovery, and invades the work product doctrine and/or attorney-client privilege. Subject to, and without waiving the foregoing objections, Plaintiffs are relying upon the expertise, education, experience and opinions of the expert witnesses. This answer will be supplemented in accordance with §668.11 of the Iowa Code and Rule 1.508 of the Iowa Rules of Civil Procedure. Plaintiff also identifies the following individuals at this time:

Rehab department staff (name unknown)
Veteran's Memorial Hospital
40 1st Street SE, Waukon, IA 52172

The first time Plaintiff got out of bed following surgery, staff member realized there was a large discrepancy between Plaintiff's right and left legs. Said, "but you didn't hear it from me because last time I got myself into trouble with a disclosure like that."

Dr. B. Nesseim, MD
Veteran's Memorial Hospital
40 1st Street SE, Waukon, IA 52172

Dr. Nesseim suggested Plaintiff "do something" about her leg and recommended she seek further care following the surgery.

Dr. Todd Kowalski
Gundersen Health System; Infectious Disease and Wound Care
1900 South Avenue, LaCrosse, WI 54601

Dr. Kowalski said to Plaintiff, "the infection most likely came from the initial surgery, but you'll never know that with absolute certainty." He also recommended Plaintiff get teeth pulled before additional surgery to prevent any future problems of infections with the hip surgery.

Dr. Jeffrey Lawrence
Vernon Memorial Hospital
407 S. Main Street #101, Viroqua, WI 54665

Dr. Lawrence told Plaintiff that he would not have done the partial hip replacement in the first place, saying he would have pinned the fracture instead. Also told Plaintiff he's seen seen other patients from Waukon following an initial hip replacement by Dr. Lyons.

IOWA DISTRICT COURT, ALLAMAKEE COUNTY

DONNA JEAN LUBAHN and
ERNEST LUBAHN,

Plaintiffs,

vs.

No. LACV026101

VAL LYONS, M.D., and
VAL O. LYONS, M.D., P.C.,

Defendants.

DEPOSITION OF DONNA JEAN LUBAHN, taken on
behalf of the Defendants on January 18, 2016,
commencing at 9:35 a.m., at the Conference Room,
Floyd County Medical Center, 800 11th Street,
Charles City, Iowa, before Dwight Van Wyngarden,
Certified Shorthand Reporter of Iowa, pursuant to
Notice.

APPEARANCES:

MR. MICHAEL H. BIDERMAN, of the firm of Hayes,
Lorenzen Lawyers, Plaza Centre One, Suite 580, 125
South Dubuque Street, Iowa City, Iowa 52240;
Counsel for the Plaintiffs.

MR. TIMOTHY C. BOLLER, of the firm of Weilein
& Boller, P.C., Attorneys at Law, 515 Main Street,
Suite E, P.O. Box 724, Cedar Falls, Iowa 50613;
Counsel for the Defendants.

Also present: Mr. Ernest Lubahn
Mr. Randy Lubahn
Dr. Val O. Lyons
Ms. Karen M. Likens

DONNA JEAN LUBAHN,

being produced, sworn as hereinafter certified and
examined on behalf of the Defendants, testified as
follows:

DIRECT EXAMINATION

BY MR. BOLLER:

Q. Would you please state your name for the
record?

A. Donna J. Lubahn.

Q. And where do you reside?

A. In Waukon, Iowa.

Q. Okay. Do you mind if I call you Donna?

A. That would be fine.

Q. All right. Donna, my name is Tim Boller,
as you know, and I represent Dr. Lyons and his
professional corporation in this matter. I'm going
to be asking you some questions about the matters
that are in issue in this lawsuit.

First of all, I'll ask, have you ever had
your deposition taken before?

A. No.

Q. I didn't think so. And I'm sure your
attorney has had a chance to talk to you about how
we proceed, but why don't I kind of give you my
version of the rules here, so to speak.

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I N D E XPage

Direct Examination by Mr. Boller

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DEPOSITION EXHIBITS

Identified

1 Handwritten notes

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* * * * *

S T I P U L A T I O N

It is stipulated and agreed by and between
Counsel for the respective parties that the
deposition of DONNA JEAN LUBAHN may be taken on the
18th day of January, 2016, before Dwight Van
Wyngarden, Certified Shorthand Reporter of Iowa;
that the deposition is taken pursuant to the Iowa
Rules of Civil Procedure and may be used for all
purposes contemplated by said Rules.

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I'm going to ask you questions. I'd ask
that you allow me to finish asking the question
before you try to answer so we're both not talking
at the same time, which can drive Mr. Van Wyngarden
crazy. And then the other thing is, try to answer
out loud and audibly; all right? If that sounds
okay.

A. Fine.

Q. All right. The other thing is, if you
don't hear a question, and I doubt that will
happen, because this room is pretty small, but if
you don't hear a question, please ask me to speak
up. The more likely scenario is if you don't
understand a question, please indicate. Otherwise
I have to assume that you've heard and understood
the question. Fair enough?

A. Uh-huh.

Q. That's a "yes"?

A. That's a "yes."

Q. Okay. And we'll remind you. That's
probably the least important of the rules anyway.
It's my understanding that you're married to --
well, what is your husband's name?

A. Ernest W. Lubahn.

Q. And how long have you been married?

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1 shoe raise of an inch and a half; correct,
 2 Dr. Lyons?
 3 A. Yes.
 4 Q. All right. And then subsequently he told
 5 you to get an insert, a shoe insert?
 6 A. That was before we did the raise up of
 7 the shoe. We did the insert in my regular shoe and
 8 then it wasn't enough. So then we went to the
 9 built-up shoe.
 10 Q. Okay. So you recall initially Dr. Lyons
 11 told you to use a shoe insert?
 12 A. Yeah, we did shoe inserts first.
 13 Q. Okay. And then after that he told you,
 14 why don't you get the shoe raise which was
 15 approximately an inch and a half, is that right?
 16 A. Yes.
 17 Q. And then subsequent to that, as best you
 18 can recall, the physical therapist told you to
 19 increase that shoe raise another quarter of an
 20 inch?
 21 A. Yes.
 22 Q. Okay. Now I was confused then. You said
 23 that there was a third appointment with Dr. Lyons,
 24 but somehow you weren't notified? How did that
 25 work?

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1 A. Well, we knew the date, because Dr. Lyons
 2 was in town on those days for surgery, but we did
 3 not know the time until they would call you the day
 4 of. But I never got a call. So I just never went
 5 and I never got another call.
 6 Q. Okay. Well, at some point -- so you
 7 don't recall calling Dr. Lyons' office and
 8 canceling an appointment?
 9 A. No.
 10 Q. So you're saying that did not happen?
 11 A. I never canceled an appointment, no.
 12 Q. Okay. So if the records reflected that
 13 you called Dr. Lyons' office to cancel an
 14 appointment because you were going to get a second
 15 opinion, that would be inaccurate?
 16 A. Yes.
 17 Q. Okay. Now did you seek a second opinion?
 18 A. Yes. Dr. Nesseim encouraged me, he said
 19 you do not want to walk like that, why don't you
 20 seek a second opinion. And also I got a call from
 21 Mr. Myers, the hospital administrator, who also
 22 recommended that I should seek a second opinion.
 23 Q. Okay. And you went to see a
 24 Dr. Lawrence, is that right?
 25 A. Yes.

71

1 Q. All right. Tell me, so you visited with
 2 Dr. Nesseim then before you saw Dr. Lawrence?
 3 A. Yes. He recommended that I should do
 4 something.
 5 Q. How many visits did you have with
 6 Dr. Nesseim before you saw Dr. Lawrence?
 7 A. I couldn't tell you that. I don't
 8 remember if I was there for a physical or just
 9 there. I don't recall why I was there. But
 10 anyway, he told me that I should do something about
 11 it.
 12 Q. So you were in Dr. Nesseim's office for
 13 some reason?
 14 A. Yes.
 15 Q. And then there was a discussion about
 16 your leg?
 17 A. Yes.
 18 Q. Okay. Tell me as best you can recall
 19 what Dr. Nesseim told you.
 20 A. He just told me that you do not want to
 21 walk like that for the rest of your life, you need
 22 to do something about it and seek a second opinion.
 23 Q. Okay. And then you said the hospital
 24 administrator also called you?
 25 A. Yes.

72

1 Q. And who was that again?
 2 A. Mr. Myers.
 3 Q. All right. Do you know his first name?
 4 A. Mike.
 5 Q. All right. When did he contact you?
 6 A. It was after I was out of the hospital.
 7 I can't recall the date. It might be written down
 8 somewhere. But in my head I can't recall the date.
 9 Q. So he just called you, is that right?
 10 A. Yes.
 11 Q. On his own volition?
 12 A. Yes.
 13 Q. Okay. Tell me as specifically as you can
 14 recall what Mr. Myers told you.
 15 A. He just told me that he had heard that I
 16 had quite a discrepancy in my legs and that I -- he
 17 would suggest that I seek a second opinion.
 18 Q. Okay. Anything else you recall about
 19 your discussion with Mr. Myers?
 20 A. No.
 21 Q. And then you went to see Dr. Lawrence?
 22 A. Yes.
 23 Q. Okay. Do you know approximately when you
 24 had your first visit with Dr. Lawrence?
 25 A. Actually, I don't think I was supposed to

1 IOWA DISTRICT COURT, ALLAMAKEE COUNTY

2

3 DONNA JEAN LUBAHN and
ERNEST LUBAHN,

4 Plaintiffs,

5 vs. No. LACV026101

6 VAL LYONS, M.D., and
7 VAL O. LYONS, M.D., P.C.,

8 Defendants.

9

10

11 DEPOSITION OF JEFFREY M. LAWRENCE, M.D.,
12 taken on behalf of the Defendants on April 6, 2016,
13 commencing at 1:08 p.m., at the Vernon Memorial
14 Medical Center, 507 South Main Street, Viroqua,
Wisconsin, before Dwight Van Wyngarden, Certified
Shorthand Reporter of Iowa, pursuant to Notice.

15

16 APPEARANCES:

17 MR. MICHAEL H. BIDERMAN, of the firm of Hayes,
18 Lorenzen Lawyers, Plaza Centre One, Suite 580, 125
19 South Dubuque Street, Iowa City, Iowa 52240;
Counsel for the Plaintiffs.

20 MR. TIMOTHY C. BOLLER, of the firm of Weilein
21 & Boller, P.C., Attorneys at Law, 515 Main Street,
Suite E, P.O. Box 724, Cedar Falls, Iowa 50613;
Counsel for the Defendants.

22

23

24

25

3

1 JEFFREY M. LAWRENCE, M.D.,

2 being produced, sworn as hereinafter certified and

3 examined on behalf of the Defendants, testified as

4 follows:

5 DIRECT EXAMINATION

6 BY MR. BOLLER:

7 Q. Would you please state your name for the

8 record?

9 A. Jeffrey Michael Lawrence.

10 Q. And what is your office address, sir?

11 A. 407 South Main Street, Viroqua,
12 Wisconsin.

13 Q. I assume you've had your deposition taken

14 before?

15 A. Yes.

16 Q. Okay. I'm going to be asking -- as you

17 know, I'm Tim Boller and I represent Dr. Lyons.

18 I'm going to be asking you some questions about

19 your care of Donna Lubahn, who is involved in this

20 litigation. Let me ask you, first of all, do you

21 have an independent recollection of taking care of

22 Ms. Lubahn?

23 A. I do.

24 Q. Okay. Have you brought your records with

25 you today?

2

1 I N D E X

2 Page

3 Direct Examination by Mr. Boller 3

4 Cross Examination by Mr. Biderman 54

5

6

7 DEPOSITION EXHIBITS Identified

8 10 Photocopy of x-ray 8

9 11 Photocopy of x-ray 43

10

11 * * * * *

12

13 S T I P U L A T I O N

14 It is stipulated and agreed by and between

15 Counsel for the respective parties that the

16 deposition of JEFFREY M. LAWRENCE, M.D., may be

17 taken on the 6th day of April, 2016, before Dwight

18 Van Wyngarden, Certified Shorthand Reporter of

19 Iowa; that the deposition is taken pursuant to the

20 Iowa Rules of Civil Procedure and may be used for

21 all purposes contemplated by said Rules.

22

23

24

25

4

1 A. I did.

2 Q. Okay, good. And you are an orthopedic

3 surgeon?

4 A. Correct.

5 Q. And you're licensed in the state of

6 Wisconsin?

7 A. I am.

8 Q. Are you licensed anywhere else?

9 A. No.

10 Q. Are you board-certified in orthopedic

11 surgery?

12 A. I am.

13 Q. Okay. And you practice here in Viroqua?

14 A. Correct.

15 Q. And you are affiliated with Gunderson

16 Clinic?

17 A. Correct.

18 Q. Tell me about the nature of your

19 practice. What conditions do you generally treat?

20 A. Well, I'm fellowship trained in joint

21 replacements, hip and knee replacements, and my

22 practice is primarily hip and knee replacements

23 with some trauma and some arthroscopies that I do

24 as well. But mostly, I'd say 90 percent is joint

25 replacements.

37

1 were you attributing it to the leg length
2 discrepancy?

3 A. I was.

4 Q. Okay. Let's go on then and talk about
5 the surgery that you performed on March 3, 2014.
6 And just so I'm clear, and I'm not suggesting
7 anything, did you see her at all again prior to
8 that surgery?

9 A. No.

10 Q. Okay. And that surgery would have been
11 performed here in Viroqua at Vernon Memorial;
12 correct?

13 A. Correct.

14 Q. All right. And as I understand it then,
15 going into that surgery you intended to perform a
16 total hip arthroplasty?

17 A. Correct.

18 Q. All right. Tell me, why is that the best
19 surgical option for a patient such as Donna Lubahn?

20 A. At this juncture?

21 Q. Yes, following the leg length discrepancy
22 as we discussed it.

23 A. So infection aside, having been walking
24 with a hemiarthroplasty for a period of time and
25 then also having developed groin pain, so in my

38

1 mind without knowing that she had an infection, and
2 we did actually do some lab work specifically
3 looking for infection beforehand, we always work up
4 and get it's called a sed rate and a C-reactive
5 protein.

6 And her sed rate was elevated, which can
7 occur with arthritic patients, but her C-reactive
8 protein was totally normal, so I was a little bit
9 surprised, quite a bit surprised when we opened up
10 her hip and found it. But that's an aside.

11 A patient with a hemiarthroplasty that
12 has groin pain can be induced because the ball is
13 rubbing against her native acetabulum, so that
14 motion can cause pain. And not having been in her
15 operation or seen her socket, I had no way of
16 knowing what the status was, and certainly she had
17 a little arthritis there in addition to the
18 fracture, and that could contribute to it.

19 So if you're asking why did we not just
20 do another hemiarthroplasty, the reason that I
21 planned to do a total was because of the groin
22 pain.

23 Q. And the groin pain indicated to you that
24 perhaps it was rubbing against the acetabulum and
25 causing arthritic problems?

39

1 A. Correct.

2 Q. Okay. So the better option was just to
3 put the cup in and be done with it?

4 A. She doesn't want another operation that'
5 not going to take her pain away. So it was the
6 more predictable operation.

7 Q. You were alluding to my other question.
8 When you got in there and discovered the infection,
9 that was a total surprise?

10 A. Yes.

11 Q. Because she wasn't exhibiting any
12 symptoms, at least as you knew it at the time, that
13 indicated an infection?

14 A. She didn't have an elevated white count,
15 she didn't have fever, chills. She didn't have any
16 other signs of being sick.

17 Q. She did have an elevated sed rate, but
18 that can easily be accounted for by the arthritis?

19 A. Correct.

20 Q. Okay. And her C-reactive protein was
21 normal?

22 A. Correct.

23 Q. Let's talk then about what did you
24 observe then once you got in there and started
25 performing the surgery?

40

1 A. So we opened up her hip joint and we
2 found pus.

3 Q. And I think you termed it copious amounts
4 of pus.

5 A. Okay.

6 Q. All right. And then you sent that pus to
7 the lab and they measured it and that had an
8 extremely high white blood count?

9 A. Right.

10 Q. Did you reach a diagnosis that she had an
11 infection at that point in time?

12 A. Yes.

13 Q. The reason I ask that is that
14 subsequently you send that for blood cultures;
15 correct?

16 A. For cultures.

17 Q. Yes. And those cultures ultimately did
18 not grow anything, they were negative?

19 A. Correct.

20 Q. Does that rule out an infection?

21 A. It doesn't. This was a very odd
22 scenario. But there are some kind of low-grade,
23 nonaggressive bacteria that you may not isolate on
24 a culture, and so in the total joint world we use
25 cell counts and percentages of types of cells to

41

1 make diagnoses sometimes in the absence of a
2 definitive organism that you can hang your hat on.
3 So for somebody with an artificial hip,
4 anything over 2,000 to 2,200 white cells is an
5 infection until proven otherwise. And then the
6 percentage of the more inflammatory cells called
7 polymorphonuclear cells, PMNs, if you're over, you
8 know, 80 percent, diagnostically you love to see
9 like 98 percent or something to really hang your
10 hat on it.

11 And hers, I don't remember what the cell
12 count was, I think she was like 84 percent,
13 85 percent polies. I think I put it in my
14 operative note. Eighty-six percent polies, yeah,
15 and 44,000 white cells. So that's a pretty high
16 number when your threshold is like 2500 or, you
17 know, low 2000s.

18 So even though at the time I had no way
19 of knowing what the bacteria was or anything like
20 that, with those numbers it would be really
21 irresponsible to go ahead and put in a new implant
22 in the face of an infection that you know is then
23 going to be bathed in this potential
24 bacterial-ridden fluid that you can't cure if
25 there's an implant in there.

42

1 Q. And you're not necessarily going to have
2 the results of that culture in time to make that
3 decision, are you?

4 A. Correct. So you go to the most
5 conservative option.

6 Q. Now tell me about that. Describe the
7 procedure that you then did perform on March 3,
8 2014.

9 A. So in the face of an infection it's
10 really important that you remove as much of the
11 foreign material as you can. Bacteria love
12 artificial components and they excrete a protein
13 matrix called a glycocalyx that protects them from
14 antibiotics. So they secrete this wall that they
15 create on top of themselves and then antibiotics
16 can't get down and kill the bacteria. So you need
17 to remove as much of the foreign material -- you
18 need to remove all of the foreign material.

19 So we took out the stem, which as I
20 remember came out fairly easily, and then were
21 trying to get all the cement out. And the best way
22 to do that is to open the femur up and to be as
23 meticulous and thorough as you can.

24 So we bivalve the femur, open it up,
25 remove all the fibrous membrane and the cement and

43

1 you can wash everything out and clean it all up,
2 put it back together, and then we put in a
3 temporary implant which was an off-the-shelf stem
4 that you coat with an antibiotic-impregnated
5 cement.

6 And then there's a picture of it here.
7 And so here's where we cut the bone. We put this
8 stem in. This stem is coated with antibiotic-
9 impregnated cement around it. And then we put a
10 plastic liner up into the acetabulum that's fixated
11 with cement and also contains antibiotics. So you
12 have this antibiotic that leaches out of this
13 cement that causes a localized effect as well as
14 the systemic effect that you use when you give
15 somebody IV antibiotics.

16 Q. Okay.

17 A. So you hit it from both sides.

18 MR. BOLLER: Why don't we mark that as
19 Exhibit 11.

20 (Deposition Exhibit 11 marked for
21 identification, as requested.)

22 Q. Doctor, I'm going to hand you what's been
23 marked Deposition Exhibit 11 and that's a copy of
24 another x-ray. Can you identify that for the
25 record, please?

44

1 A. That's the postoperative film after I had
2 placed the antibiotic-impregnated spacer in the
3 first operation by me.

4 Q. And I think that indicates that film was
5 taken on March 17, 2014, is that right?

6 A. Correct.

7 Q. And this was the x-ray that you were
8 referring to previously when you were talking about
9 the spacer that you placed during the March 3, 2014
10 procedure?

11 A. Correct.

12 Q. All right. Do you have an opinion as to
13 what caused the infection that you observed during
14 the surgery on March 3, 2014?

15 A. I don't.

16 Q. You don't know?

17 A. No.

18 Q. Now I think your next visit with
19 Ms. Lubahn was on April 17th, 2014?

20 A. Yes.

21 Q. And she had completed her antibiotic
22 regime by that point; correct?

23 A. Yes.

24 Q. I assume you really were not involved in
25 her care from the time of the March 3, 2014 surgery

45

1 up until now? You're leaving that up to infectious
2 disease personnel and that sort of thing; correct?

3 A. Correct.

4 Q. But at that point then she was doing well
5 and she was not in any pain?

6 A. Correct.

7 Q. So you're thinking about going ahead then
8 with the total hip arthroplasty?

9 A. Correct.

10 Q. I noted, though, that you scheduled her
11 for an aspiration first.

12 A. Yes.

13 Q. Tell us why you did that.

14 A. So you treat somebody with antibiotics
15 for six weeks and then you give them a drug
16 holiday for two weeks to let the antibiotics clear
17 their system and make sure that if there are
18 bacteria still in place that they can proliferate
19 and grow without being suppressed in any way by
20 antibiotics.

21 And then our protocol is to re-aspirate
22 the hip to test the fluid, again just trying to
23 make to sure that we're as safe as we can. Even
24 though we didn't grow anything out the first time,
25 there's always the possibility that she might have

46

1 something that does grow and you want to make sure
2 that you're, again, not going to miss the obvious.
3 And you certainly don't want to go in a second time
4 and open up the hip and find pus.

5 Q. And it looks, based on your note, and we
6 can refer specifically to it, but maybe to save
7 time, you ordered lab tests on Ms. Lubahn at that
8 time?

9 A. Yes.

10 Q. And I think her sed rate came back at
11 69.

12 A. Okay. I don't have that in front of me.
13 What was her CRP at that time?

14 Q. That was 5.6. Okay. Let me see if I can
15 find that note. Here we go. You'll see what I
16 have highlighted there.

17 A. Okay. Okay.

18 Q. And I don't have a lot to cover, but it
19 looks like based on your note you say, we will plan
20 to proceed with the aspirate, in two weeks repeat
21 her labs, and then make a decision on the
22 reimplantation. So apparently was the CRP a little
23 high for you to proceed with the surgery?

24 A. Yes.

25 Q. But evidently that must have lowered,

47

1 because you did proceed with the surgery as
2 scheduled on May 13, 2014?

3 A. Correct. But I don't have an independent
4 recollection what those numbers were.

5 Q. Okay. And I didn't see anything and
6 that's why I was asking. But apparently things
7 were okay then to proceed?

8 A. Yes.

9 Q. Okay. Let's talk briefly about that
10 May 13, 2014 surgery. Again, that would have been
11 performed here at Vernon Memorial in Viroqua;
12 correct?

13 A. Correct.

14 Q. And could you describe for us, what was
15 the procedure that you then performed at that time?

16 A. It was essentially a total hip revision.
17 And so we took out the spacer and put in a revision
18 total hip implant. And I'm looking for my
19 operative note.

20 Q. Here, I've got a copy right here for you.

21 A. Okay. Thank you. So it would have
22 involved taking out the cement spacer. And we put
23 these in without what I would consider a good
24 cement technique on purpose so that they come out
25 relatively easy. You don't want to try to put them

48

1 in so it's so well fixed that there's a risk of
2 destroying the bone trying to get them out.

3 So we take these out again, and then you
4 clean the ends of the bone thoroughly, and we used
5 probably nine liters of lavage and washed
6 everything to try to make sure there's no sign of
7 any retained cement or fibrous membrane or anything
8 like that.

9 And then on the socket side we have a
10 reamer that machines the socket to fit the shape of
11 the implant, so we ream the socket to take away
12 whatever cartilage might be remaining and then we
13 put in a fixed acetabulum component and some
14 screws.

15 And then on the femoral side we ream down
16 into the bone and machine the canal to fit a
17 cementless implant that was put in to fit her canal
18 and her anatomy.

19 And then again it's a little bit, we're
20 still in this kind of a place where we don't know
21 what her true leg length is, because she was an
22 inch-plus long, but when we put the spacer in no
23 her leg length is off, and so we measured her to
24 be -- in the office on one of my notes I saw she
25 was short on this side now by three-eighths of an

SUPPLEMENTAL RULE 1.508 STATEMENT OF WILLIAM T. SIMONET, M.D., P.A.

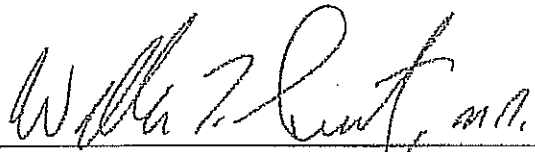
I am Board-certified in orthopedic surgery. I presently practice orthopedic surgery in Burnsville, MN. My current CV is attached.

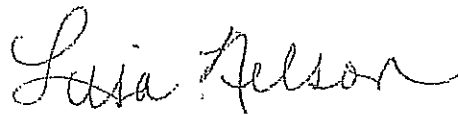
Since my report dated March 15, 2016 I have reviewed the deposition of Jeffrey M. Lawrence, M.D.

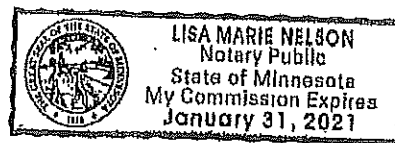
My supplemental opinions, stated to a degree of reasonable medical probability, are as follows:

1. Donna Lubahn's leg length discrepancy, even taking into account Dr. Lawrence's testimony, was still a departure from the standard of care.
2. When Donna Lubahn ambulated with her leg length discrepancy caused by Dr. Lyons, it increased the stress on her other joints.
3. A total hip arthroplasty, as was performed on Donna Lubahn by Dr. Lyons, increases the risk of infection vs. pinning.
4. Donna Lubahn lost a chance of avoiding the infection found by Dr. Lawrence through Dr. Lyons' performance of a total hip arthroplasty v. pinning.

Dated this 29th day of July, 2016.


WILLIAM T. SIMONET, M.D. ~~MD~~ *WTS*





1 IN THE IOWA DISTRICT COURT IN AND FOR ALLAMAKEE COUNTY¹
2
3 DONNA JEAN LUBAHN and LAW NO. LACV026101
4 ERNEST LUBAHN,
5 Plaintiffs,
6 v.
7 VAL LYONS, M.D., and
8 VAL O. LYONS, M.D., P.C.,
9 Defendants.
10
11
12
13 Deposition of
14 WILLIAM T. SIMONET, M.D.
15 taken on
16 Monday, November 14, 2016
17 commencing at
18 3:00 p.m.
19
20 REPORTER: Sandra D. Burch, RPR, CRR
21 Integrity Court Reporting, Inc.
22 7900 International Drive, Ste. 300
23 Minneapolis, Minnesota 55425
24 Office: 952.440.3886 * Toll free: 800.731.1903
25 www.IntegrityCR.com

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21 * * * * *
22 THE ORIGINAL WILL BE IN THE POSSESSION OF
23 WEILEIN & BOLLER, P.C.
24 * * * * *
25

1 INDEX³
2 EXAMINATION
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4 Mr. Boller 4
5
6 EXHIBITS:
7 Number Description Marked
8 10A - Hip X-ray from Vernon Memorial Hospital ... 78
9 12 - CV of William T. Simonet, M.D. 4
10 13 - Letter from Dr. Simonet to Karen Lorenzen,
11 dated March 15, 2016 4
12 13A - Supplemental Rule 1.508 Statement of
13 William T. Simonet, M.D., P.A. 39
14 14 - Color photo of hip with "Femoral neck"
15 marking by Dr. Simonet 23
16 15 - Color photo of hip with "Fracture line"
17 marking by Dr. Simonet 40
18 16 - Hip X-ray with "Fracture" marking by
19 Dr. Simonet 43
20
21
22
23
24
25

1 Deposition of WILLIAM T. SIMONET, M.D.,⁴
2 taken pursuant to Notice of Taking Deposition,
3 taken before Sandra D. Burch, RPR, CRR, a Notary
4 Public in and for the County of Scott, State of
5 Minnesota, at the Offices of Twin Cities
6 Orthopedics, 1000 West 140th Street, 2nd Floor,
7 Burnsville, Minnesota 55337.
8 WHEREUPON, the following proceedings were duly had:
9 (Oath administered to the witness by the
10 court reporter.)
11 WILLIAM T. SIMONET, M.D.,
12 The Witness in the above-entitled
13 matter, after having been duly
14 sworn, testifies as follows:
15
16 (Exhibit Nos. 12 and 13 Pre-Marked.)
17
18 EXAMINATION
19 BY MR. BOLLER:
20 Q Would you please state your name for the
21 record.
22 A William Thomas Simonet.
23 Q And what is your office address?
24 A 1000 West 140th Street, Burnsville,
25 Minnesota.

<p>1 going to be equal. And so, no.</p> <p>2 Q Okay. Let's go on then to number three.</p> <p>3 And I think we've covered this already. A</p> <p>4 total hip arthroplasty was performed on</p> <p>5 Donna Lubahn by Dr. Lyons.</p> <p>6 I think you meant hemiarthroplasty,</p> <p>7 didn't you?</p> <p>8 A Correct.</p> <p>9 Q Increased the risk of infection versus</p> <p>10 pinning.</p> <p>11 We pretty well covered that already,</p> <p>12 haven't we?</p> <p>13 A I believe so, yes.</p> <p>14 Q And finally, on number 4 on exhibit 13A,</p> <p>15 "Donna Lubahn lost the chance of</p> <p>16 avoiding the infection found by Dr. Lawrence</p> <p>17 through Dr. Lyons' performance of total hip</p> <p>18 arthroplasty versus pinning."</p> <p>19 Again, I think you meant</p> <p>20 hemiarthroplasty; correct?</p> <p>21 A I do.</p> <p>22 Q What did you mean by that?</p> <p>23 A Well, I think we already talked about that a</p> <p>24 little bit earlier. You asked me a question</p> <p>25 to the effect of, is there an increased risk</p>	<p>89</p> <p>1 MR. BIDERMAN: I don't have</p> <p>2 anything.</p> <p>3</p> <p>4 (Time Noted: 4:35 p.m., Monday, November</p> <p>5 14, 2016.)</p> <p>6 (The signature was waived.)</p> <p>7</p> <p>8 * * * * *</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>90</p> <p>1 of infection after hemiarthroplasty, as</p> <p>2 compared to a pinning, as we've been talking</p> <p>3 about, we'll call that a locked IM rod with</p> <p>4 a cross screw, and I answered yes. And the</p> <p>5 reason I talked about was increased surgical</p> <p>6 time, increased blood loss, increased size</p> <p>7 of incision, use of cement in the component.</p> <p>8 And so, yes, once you've done the</p> <p>9 hemiarthroplasty, you can't go back and do a</p> <p>10 pinning. You can do a pinning and then go</p> <p>11 do a hemiarthroplasty. We talked about</p> <p>12 that.</p> <p>13 Q Are you going to offer any opinions as to</p> <p>14 the cause of the infection that was seen in</p> <p>15 Donna Lubahn following, I guess,</p> <p>16 Dr. Lawrence's revision surgery, at least</p> <p>17 that was discovered during that rescission</p> <p>18 surgery?</p> <p>19 A No.</p> <p>20 Q I think we've about covered all your</p> <p>21 opinions, haven't we?</p> <p>22 A I guess.</p> <p>23 MR. BOLLER: I don't have any</p> <p>24 further questions. Thanks so much for your</p> <p>25 time.</p>	<p>92</p> <p>1 STATE OF MINNESOTA } ss.</p> <p>2 COUNTY OF SCOTT }</p> <p>3</p> <p>4 Be it known that I took the deposition of WILLIAM T.</p> <p>5 SIMONET, M.D. on the 14th day of November, 2016, in</p> <p>6 Burnsville, Minnesota;</p> <p>7 That I was then and there a Notary Public in and for</p> <p>8 the County of Scott, State of Minnesota and that by</p> <p>9 virtue thereof, I was duly authorized to administer an</p> <p>10 oath;</p> <p>11 That the witness before testifying was by me first</p> <p>12 duly sworn to testify the whole truth and nothing but</p> <p>13 the truth relative to said cause;</p> <p>14 That the testimony of said witness was recorded in</p> <p>15 Stenotype by myself and transcribed into typewriting</p> <p>16 under my direction, and that the deposition is a true</p> <p>17 record of the testimony given by the witness to the</p> <p>18 best of my ability;</p> <p>19 That the cost of the original transcript has been</p> <p>20 charged to the party noticing the deposition, unless</p> <p>21 otherwise agreed upon by Counsel, and that copies have</p> <p>22 been made available to all parties at the same cost,</p> <p>23 unless otherwise agreed upon by Counsel;</p> <p>24 That I am not related to any of the parties hereto nor</p> <p>25 interested in the outcome of the action;</p> <p>That the reading and signing of the deposition by the</p> <p>witness and the Notice of filing were waived;</p> <p>WITNESS MY HAND AND SEAL this 25th day of November,</p> <p>2016.</p> <p>Sandra D. Burch, RPR, CRR</p> <p>My Commission expires January 31, 2017</p>